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Remarks:

Regarding the claims and amendments to the claims;

During are review of the claims, the undersigned noted the erroneous existence of two claims numbered "167.". In this paper, the applicants renumber the second of the prior claim numbered "167." as claim "168", and renumber the remaining claims. The applicants' following remarks are responsive to the claims numbered in the prior *Amendment* as considered by the Examiner.

The amendments to the claims entered in this paper find full support in the specification as filed. With respect to the amendments to claim 1, 39 and 169, as well as the entry of new claims 172-175, the Examiner's attention is directed to the disclosure of applicant's "Table 1" and to the paragraph [0130] of applicant's (as published) specification for support for these claim amendments. With respect to newly presented claims 176 and 177, the Examiner's attention is directed to the subject matter canceled in claims 1 and 169 now reinstated as dependent claims in claims 176, 177.

Regarding the rejection of claims 1, 2, 16, 25, 27, 29, 31, 32, 37-39 and 158-164 and 168 under 35 USC 102(b) and/or under 35 USC 103(a) in view of WO 00/27271 (hereinafter "WO271");

The applicant respectfully traverses the rejection of the foregoing claims in view of the WO271 reference.

Prior to discussing the relative merits of the Examiner's rejection for "anticipation", the applicant points out that unpatentability based on "anticipation" type rejection under 35 USC 102(b) requires that the invention is not in fact new; see the applicant's remarks in the prior *Amendment* .

With respect now to Examiner's rejection as to "obviousness" over the prior art, the undersigned reminds the Examiner that the determination of obviousness under § 103(a)

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requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). There must be some suggestion, teaching, or motivation arising from what the prior art would have taught a person of ordinary skill in the field of the invention to make the proposed changes to the reference. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

With regard first to the "anticipation" rejection, the applicant points out that WO271 discloses somewhere within its 133 pages of content virtually every technically known and/or commercially relevant raw material which may be used in a hard surface treatment composition. Yet, the applicants assert that WO271 fails to disclose the currently claimed invention with "... sufficient precision and detail to establish that the subject matter existed in the prior art ...". With reference to the currently amended claims, which have now been amended to now require that the applicant's compositions now require "... at least 60%wt. of at least one organic solvent..", it is clear from WO271 that such an amount of an organic solvent is clearly not present nor taught by that reference. The Examiner's attention is directed to what is actually taught by WO271, specifically at page 25 wherein is stated:

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H. Aqueous Solvent System

The compositions which are aqueous, comprise at least about 80% aqueous solvent by weight of the composition, more preferably from about 80% to over 99% by weight of the composition. The aqueous compositions are typically in micellar form, and do not incorporate substantial levels of water insoluble components that induce significant micellar swelling.

The aqueous solvent system can also comprise low molecular weight, highly water soluble solvents typically found in detergent compositions, e.g., ethanol, isopropanol, etc. These solvents can be used to provide disinfectancy properties to compositions that are otherwise low in active. Additionally, they can be particularly useful in compositions wherein the total level of perfume is very low. In effect, highly volatile solvents can provide "lift", and enhance the character of the perfume. Highly volatile solvents, if present are typically present in from about 0.25% to about 5%, more preferably from about 0.5% to about 3%, most preferably from about 0.5% to about 2%, by weight of the composition. Examples of such solvents include methanol, ethanol, isopropanol, *n*-butanol, *iso*-butanol, 2-butanol, pentanol, 2-methyl-1-butanol, methoxymethanol, methoxyethanol, methoxy propanol, and mixtures thereof.

As can be understood from a review of the currently amended claims, as opposed to the WO271 disclosure, applicant's compositions now require an aqueous/organic solvent base which is predominantly comprised of the organic solvent, and only in a lesser amount is aqueous. Such is completely contrary to the requirements of WO271, which indeed note that the presence of highly volatile solvents, if present in order to '..."lift", and enhance the character of the perfume..." should be kept to a *minimum* e.g., not more than 3%wt. Such is contrary to the applicant's presently claimed compositions which properly are considered both novel and nonobvious over the WO271 disclosure.

Furthermore, the applicant points out that WO271 does not contemplate nor even remotely suggest compositions which exhibit antimicrobial efficacy following washing a substrate upon which the composition has been applied, but rather WO271 contemplates processes wherein its compositions are applied, and dried on surfaces. Indeed, nothing in WO271 demonstrates that its compositions provide or would be expected to provide a residual antimicrobial effect following a washing of the treated surface in the manner

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disclosed by the present applicant. Perhaps more pertinently as has been stated above, WO271's the "antimicrobial actives associated with the compositions of the present invention" do not anticipate the currently claimed composition.

Thus when a claim limitation is not explicitly set forth in a reference, evidence "... must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co.*, 948 F.2d at 1268. It is not sufficient if a material element or limitation is "merely probably or possibly present" in the prior art. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 [63 USPQ2d 1597] (Fed. Cir. 2002). See also, *W.L. Gore v. Garlock, Inc.*, 721 F.2d at 1554 (Fed. Cir. 1983) (anticipation "cannot be predicated on mere conjecture respecting the characteristics of products that might result from the practice of processes disclosed in references"); *In re Oelrich*, 666 F.2d 578, 581 [212 USPQ 323] (CCPA 1982) (to anticipate, the asserted inherent function must be present in the prior art).

It is believed that the Examiner has not properly made their case that the currently claimed invention is properly rejected as being anticipated under 35 USC 102(b) in view of the WO271 reference.

Accordingly, reconsideration of the propriety of the rejection and its withdrawal is solicited.

Regarding the rejection of claims 3, 34, 167 and 170 under 35 USC 103(a) in view of WO 00/27271 (hereinafter "WO271"):

The undersigned reminds the Examiner that the determination of obviousness under the standards set forth *supra*. For the sake of brevity, the applicant herein repeats the foregoing remarks entered above regarding the WO271 reference as being equally applicable to the current grounds of rejection.

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As discussed previously, WO271's compositions are all necessarily largely aqueous (... at least about 80% aqueous solvent by weight ...) and as such, are now readily distinguishable over those present claimed by the applicants. Relatively speaking, applicant's presently claimed compositions are the *reverse* of what is disclosed in WO271, in that they are predominantly based on an organic solvent constituent, and include a lesser proportion of water, indeed, not in excess of about 40%wt. Such is distinguishable and quite differentiable over WO271 which clearly prefers an even greater amount of water:

H. Aqueous Solvent System

The compositions which are aqueous, comprise at least about 80% aqueous solvent by weight of the composition, more preferably from about 80% to over 99% by weight of the composition. The aqueous compositions are typically in micellar form, and do not incorporate

The applicant repeats that with respect to the "obviousness" rejection, it is the applicant's view that the Examiner's rejection of the claims is in no small part based on a "hindsight reconstruction" of the applicant's invention which is based on a retrospective assemblage of the applicant's claimed invention wherein there lacks an appropriate teaching or suggestion. Such is impermissible. "Obviousness cannot be established by combining the teachings of prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination [...]" At best, in view of these disclosures, one skilled in the art might find it obvious to try various combinations of these known (scale and corrosion prevention) agents. However, that is not the standard of 35 USC Sec. 103" *In re Geiger* 2 USPQ2d 1276, 1278 (CAFC, 1987) See also *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303 (CAFC, 1983);

Further, in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

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"It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

It is the applicant's view that the prior art documents cited by the Examiner fail to meet the proper burden of proof, and that the presently presented claims should be allowed. It is quite clear that WO271 expressly teaches substantially aqueous systems which require "... at least about 80% aqueous solvent by weight of the composition, more preferably from about 80% to over 99% by weight of the composition." Such is quite different than the applicant's currently claimed compositions as noted and discussed above.

Accordingly reconsideration of the propriety of the rejection of the claims under 35 USC 103(a), and its withdrawal is respectfully requested.

Should the Examiner in charge of this application believe that communication with the undersigned will favorably advance the prosecution of this application, they are invited to contact the undersigned at their convenience.

Conditional Authorization for Fees

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

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Respectfully Submitted;

Andrew N. Parfomak
Andrew N. Parfomak, Esq.
Reg. No. 32,431
Norris, McLaughlin & Marcus, PC
875 Third Avenue, 18th Floor
New York, NY 10022

Tel: 212 808-0700

18 March 2009

Date:

CERTIFICATION OF TELEFAX TRANSMISSION:
I hereby certify that this paper is being telefax transmitted to the US Patent and
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Allyson Ross

18 March 2009

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